Unit Overview

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5.1 Unit Instructions — Scope and Objectives

A. Instructions

To complete this unit, you will need your copy of the Michigan Vehicle Code and a VCR.

1) Read the entire unit.
2) View the videotape.
3) Complete the review and instructional activities in Section 5.8, and check your answers using the answer key in Section 5.9.
4) Complete the unit evaluation form and the videotape evaluation form.

B. Scope and Objectives

This unit addresses two issues that are of primary importance in adjudicating a traffic offense:

1) Identifying the elements of the offense; and,
2) Applying the facts presented by the parties to the elements of the offense to reach a determination of responsibility.

This unit's discussion of these two issues will refine some of the concepts you have previously learned about conducting informal traffic civil infraction hearings, applying them in the context of four common traffic offenses. At the end of this unit, you will view two videotaped examples of informal hearings.

After completing this unit, you will be able to:

1) Identify the elements of:
   - Speeding offenses;
   - Right-of-way offenses;

- Careless driving offenses; and,
- Reckless driving offenses.

2) Identify factors that excuse a defendant's responsibility for a traffic civil infraction.
3) Evaluate evidence presented in an informal hearing.
4) Explain the reasoning that supports your final decisions in traffic civil infraction cases.

5.2 Establishing the Elements of a Traffic Offense

A magistrate's primary duty in adjudicating a traffic civil infraction case is determining whether to find the defendant responsible for the offense. As noted in Sections 3.4(C) and 4.3, the magistrate makes this finding by consulting the state statute or local ordinance governing the charged offense and determining whether the defendant's conduct corresponds to the particular **elements** that comprise the offense. The elements of an offense are the facts that must be proven to find that a defendant has committed that offense. The elements of a civil traffic infraction can be established either in the defendant's admission of responsibility given in response to a citation or at a hearing.

> **Note:** The magistrate must also keep the elements of misdemeanor offenses in mind for purposes of accepting a plea of guilty or nolo contendere under MCL 600.8511(a)-(c). The magistrate should not accept a guilty plea if the defendant does not admit to all the elements of the misdemeanor offense for which sentence is to be imposed.

A. Burden of Proof

When the defendant does not plead guilty or admit responsibility, the citing officer must present evidence proving that the defendant committed a given traffic offense. If the defendant has a defense to a traffic violation charge, the defendant must present evidence supporting that defense. The obligation to establish an element of or a defense to a violation of law is known as the **burden of proof.**

**Black's Law Dictionary* (5th Edition, 1979) defines a "prima facie case" as one that will entitle a party to recover if no evidence to the contrary is offered by the opposite party.

At an informal hearing on a civil infraction, the plaintiff (usually the citing officer) presents his or her evidence first because the plaintiff has the burden of proof to establish responsibility. To meet this burden, the plaintiff must present evidence establishing each element of the charged offense. These elements constitute the plaintiff's ***prima facie*** case.* If the plaintiff does not prove each element of the charged offense, the magistrate must enter a finding of non-responsibility in favor of the defendant.

If the plaintiff presents a *prima facie* case at the informal hearing, the magistrate should find the defendant responsible if the defendant offers no evidence whatsoever. Defendants usually present evidence in their defense at an informal hearing, however. When the citing officer has finished his or her presentation of evidence, the magistrate *must* allow the defendant an

opportunity to present his or her evidence *before* making any decision in the case. A defendant's evidence will either contradict the facts presented to establish the plaintiff's *prima facie* case or raise an excuse from responsibility not present in the *prima facie* case.

In considering the evidence presented by both parties at an informal traffic civil infraction hearing, the magistrate should render a decision that is supported by a **preponderance of the evidence**. MCL 257.746(4). A "preponderance of the evidence" means that it is "more likely than not" that the event described occurred. *People v Burton*, 433 Mich 268, 320 n 25 (1989). A preponderance of the evidence is sometimes expressed as a 51% showing that the evidence is consistent with a party's version of the facts.

The burden of proof by preponderance of the evidence in civil infraction cases is much different than the burden of proof **beyond a reasonable doubt** in criminal cases. The prosecution bears a much heavier burden of proof in criminal cases than does the plaintiff in civil infraction cases. Under Michigan's criminal jury instructions, a "reasonable doubt" has been defined as a fair, honest doubt growing out of the evidence or lack of evidence, based on reason and common sense. CJI2d 3.2(3).

B. Basic Elements of Traffic Offenses — The Plaintiff's Case

As basic elements of all traffic offenses, the magistrate must be sure that the plaintiff can:

- Identify the vehicle;
- Identify the driver;
- Establish that the alleged violation took place on a public highway;*
- Establish that the alleged violation occurred within the jurisdiction of the officer and the political subdivision that enacted the statute or ordinance at issue; and,
- Establish that the alleged offense took place within the magistrate's jurisdiction.

*Some traffic violations may occur in other locations. See, e.g., Section 5.7 on careless and reckless driving.

Intent to violate the law is another basic element to consider in adjudicating traffic offenses, particularly those that are criminal. Most traffic civil infractions do not require intent to violate the law as an element of the offense.* A magistrate can find a driver responsible for exceeding a posted speed limit, for example, without finding that he or she did so intentionally. See MCL 257.627. However, criminal misdemeanor offenses may often require intentional conduct by the defendant. See e.g., MCL 257.626 (reckless driving), MCL 750.382(2) (malicious destruction of trees, shrubs, etc. with a vehicle), and MCL 257.625(2) (authorizing or knowingly permitting another to operate a motor vehicle while intoxicated). The magistrate should consult the statute or ordinance governing the offense to decide whether intent is an element. If an offense requires intentional conduct on the part of the defendant, the statute or ordinance will often describe the prohibited behavior as "wilful," "knowing," or "malicious."

*One exception to this general statement is driving on private property to avoid a traffic signal, MCL 257.611(2).

Note: To establish the element of intent, the plaintiff must show that the defendant intended to commit the acts that constitute the violation of law. It is not necessary to establish that the defendant knew that his or her intentional conduct was prohibited by a particular provision of law.

The foregoing elements should be considered with regard to any Michigan traffic offense. Sections 5.4-5.7 of this unit discuss the additional elements required for four common traffic offenses. The additional elements of other Michigan traffic offenses can be found in MJI's *Traffic Benchbook - Revised Edition* (MJI, 1999).

C. Excuses from Responsibility — The Defendant's Case

The defendant in a traffic case may be excused from responsibility if he or she can show that an element of the plaintiff's case is lacking. For example:

*See Units 6 and 7 on speed measuring devices.

- A defendant in a speeding case may prove that the citing officer was not correctly operating the device that measured the defendant's speed.*

*Requirements for proper sign posting are found in the Michigan Manual of Uniform Traffic Control Devices, available from the Department of Transportation. See the address in the Reference Section.

- A defendant cited for disobeying a traffic sign or signal may show that the sign or signal was obscured by rust or vegetation, or inoperative due to theft, vandalism, or mechanical failure.*

The defendant may also raise new issues that are not already present in the elements of the prosecution's case. In certain limited circumstances, the **doctrine of sudden emergency** operates to excuse a driver from responsibility for a traffic violation. In *Socony Vacuum Oil Co v Marvin,* 313 Mich 528, 546 (1946), overruled on other grounds 393 Mich 74 (1974), *Walker v Rebeuhr,* 255 Mich 204, 206 (1931), and *Paton v Stealy*, 272 Mich 57, 62 (1935), the Supreme Court expressed the doctrine as follows:

> "One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence."

Note that the doctrine of sudden emergency applies only in extraordinary, unexpected circumstances that arise through no fault of the defendant. The circumstances must be both "unusual" *and* "unexpected" to trigger the exception. *Vander Laan v Miedema*, 385 Mich 226, 232 (1971). In *Amick v Baller*, 102 Mich App 339, 341-342 (1980), the Court of Appeals explained "unusual" and "unexpected" as follows:

> "[T]he factual pattern is 'unusual' if the facts present in the case vary from the everyday traffic routine confronting a motorist. Thus, a blizzard or other extreme weather condition may cause such an unusual driving environment that the normal

> expectations of due and ordinary care are modified by the attenuating factual conditions. 'Unsuspected' facts are those which may appear in the everyday movement of traffic, but which take place so suddenly that the normal expectations of due and ordinary care are again modified by the attenuating factual conditions."

The Michigan Court of Appeals has made the following additional statements about the doctrine of sudden emergency.

- *Vsetula v Whitmyer,* 187 Mich App 675, 680-682 (1991):

  In this case, a collision occurred when the defendant was attempting to enter a road from her driveway on a winter day. She was unable to stop her car at the end of the driveway because it skidded on an unseen patch of ice and slid into the road. Earlier in the day, there had been no ice on the defendant's driveway. The Court of Appeals ruled that the sudden emergency doctrine was applicable to this case.

- *Young v Flood*, 182 Mich App 538, 542-544 (1990):

  Failure to stop in the assured clear distance is not excused by hitting an icy spot, where the driver has reasons to suspect icy spots and adjust speed to be able to stop. However, a driver may be excused if he or she is driving at a prudent speed for icy conditions and loses control of the vehicle due to a sudden unseen, unsuspected patch of ice.*

*For another case involving ice, see *People v Jones*, 132 Mich App 368 (1984), discussed in Section 5.6(B)(1).

- *Hill v Wilson,* 209 Mich App 356, 357-358 (1995):

  The sudden emergency doctrine did not excuse the negligence of a motorcyclist who collided in heavy traffic with the vehicle in front of him, when that vehicle stopped suddenly to avoid hitting a family of ducks and another car braking for the same ducks. The Court stated: "Far from being a sudden emergency, we find the phenomenon of motorists being forced to make unanticipated stops is a common occurrence during rush hour."

- *Wright v Marzolf*, 34 Mich App 612 (1971):

  The doctrine of sudden emergency is applicable where there is evidence that an emergency existed within the doctrine's meaning. In this case, the doctrine applied where a child suddenly darted into the street from in front of a parked car, and where defendant driver tooted her horn, swerved to avoid the child, immediately applied her brakes, and almost came to a complete stop before striking the child with her car.

- *Spillars v Simons*, 42 Mich App 101, 105-107 (1972):

  In this rear-end collision case, the defendant rear-ended the lead car, but claimed that the collision was caused by the lead car's failure to signal for a left turn. The Court of Appeals found that this was not the type of

unexpected emergency that would bring the sudden emergency doctrine into play. The Court of Appeals stated:

> "Not every difficulty that a motorist encounters is a condition that will excuse his liability [under the sudden emergency doctrine]. The condition must be extraordinary and 'totally unexpected.'" *Id*. at 105-106.

- *Vander Laan v Miedema*, 22 Mich App 170, 178 (1970), reversed on other grounds 385 Mich 226 (1971):

  In this rear-end collision case, the defendant rear-ended the lead car but claimed he collided with the lead car because it stopped while he was looking in the rear-view mirror. The Court of Appeals found that this case presented no unexpected or extraordinary condition that would excuse violation of the assured clear distance and rear-end statutes. Drivers should stay behind other vehicles at such a distance as will permit a quick look into the rear-view mirror without a collision if the other vehicles should suddenly slow or stop.

5.3 Applying the Law to the Facts — Evaluating the Evidence

*See MCL 257.746(2).

Once the magistrate has identified the elements of a traffic offense from the statute or ordinance that creates the offense, he or she must carefully listen to the parties' renditions of the facts, looking for facts that match the elements of the offense. This can be a difficult task in an informal hearing since the parties are not represented by attorneys who understand that adjudication involves a process of applying facts to statutory criteria.* The parties may present the magistrate with numerous facts that have no **relevance** at all to the elements of the charged offense, and the magistrate must be familiar enough with these elements to discern which facts are important to his or her decision and which are not.

*MCL 257.746(1).

The parties may also present the magistrate with evidence that is not **reliable**. While the magistrate is not bound by the Michigan Rules of Evidence in an informal hearing,* certain principles from these rules are useful to the magistrate in deciding what weight to give the evidence that the parties present.

A. Relevance

Magistrates should not base their decisions on evidence that is not relevant to the charged offense. Michigan Rule of Evidence 401 defines "relevant evidence" as:

> ". . . evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

In plain English, MRE 401 lists two components for relevant evidence:

1) The evidence pertains to a fact that impacts on the magistrate's decision; and,
2) The evidence makes the existence of that fact more or less probable than it would be without the evidence.

Applying the foregoing criteria to speeding offenses,* evidence relevant to determining whether a driver's speed was reasonable under Michigan's basic speed law could include such factors as weather, time of day, vehicle type, traffic volume, road surface, and sight limitations. The color of defendant's car or the attitude of the citing officer are not relevant to this determination.

*See Section 5.4 on speeding offenses.

B. Establishing the Reliability of Evidence Presented

Evidence at an informal hearing may take the form of **testimony** by the defendant, the complaining officer, or nonparty witnesses, who will verbally explain what happened as it pertains to the charged offense. The parties may also introduce **physical evidence**. Car parts, speed measurements, and skid marks are forms of physical evidence. Finally, **documents** (e.g., registration certificates, repair receipts, cancelled checks, photographs) may be presented as part of the evidence in a civil infraction hearing. The following discussion describes briefly some factors a magistrate should consider in assessing the reliability of these types of evidence.

When evaluating the testimony of a witness, one factor the magistrate should consider is whether the witness is **competent** to make the statements offered into evidence. A magistrate should not give much weight to a witness's testimony that is not based upon the witness's personal knowledge.* In an accident case, for example, the magistrate should consider whether the witness was standing in a place from which he or she could view the accident clearly, or whether any conditions existed that would have impeded the witness's ability to see the accident. See *Hicks v Bacon*, 26 Mich App 487, 493-494 (1970).

*See Michigan Rules of Evidence 601-602.

The magistrate should also distinguish between a witness's description of some fact perceived and a statement of **opinion**. A witness does not need to be an expert in traffic matters to give an opinion, but if opinion testimony is given, the magistrate should inquire into the perceptions that form the basis for the opinion and consider whether the opinion is reasonable in light of the witness's perception.* In questioning police officers about evidence pertaining to traffic offenses, magistrates should inquire as to the officer's training and expertise. Frequently, officers will appear in court having observed vehicles that have fallen (fall speeds), vaulted (flip-vault speeds), rolled over (tip-over speeds), or failed to negotiate curves (yaw, sideslip and other critical curve speeds), and based on this, have made a speed determination. Such speed determinations are valid only if the officer has the proper training and experience to support them.

*See Michigan Rule of Evidence 701 on opinion testimony by lay witnesses.

*Speeding is discussed in Section 5.4.

Michigan appellate courts have made the following statements about opinion testimony, in the context of speeding:*

- *Stehouwer v Lewis*, 249 Mich 76, 80-81 (1929), and *Hicks v Bacon*, 26 Mich App 487, 493-494 (1970):

  A witness need not qualify as an expert in order to testify as to matters learned through ordinary observation, such as the rate of speed at which a vehicle is going, provided the witness is fully interrogated as to knowledge upon which the judgment is based.

- *Hinderer v Ann Arbor Railroad Co*, 237 Mich 232, 235 (1927), *Jackson v Trogan*, 364 Mich 148, 157 (1961), and *Hicks v Bacon*, 26 Mich App 487, 494 (1970):

  Estimates of speed based solely on opinions of the force of impact are not admissible.

- *Parks v Gaudio*, 286 Mich 133, 139-140 (1938), and *Green v Richardson*, 69 Mich App 133, 140 (1976):

  An opinion of the speed of a vehicle based on sound alone is properly excluded as evidence.

When evaluating **documentary evidence**, the magistrate should make sure that the document is properly identified, and that no questions are raised as to its authenticity. See Michigan Rules of Evidence 901-1008 for guidance on authentication of documents.

A defendant's **admission** of a fact to a police officer may be considered reliable, particularly where the fact admitted is against the defendant's interest. The Michigan Court of Appeals has said:

- *People v Chandler*, 75 Mich App 585, 590 (1977):

  Admissions made to a police officer by the defendant-driver of an automobile involved in an accident are admissible in any court proceedings.

When evaluating evidence gathered from **scientific tests or measuring devices**, the magistrate should seek to establish whether the test or measuring was performed in such a way as to render accurate results. See Section 6.7 for a full discussion of the guidelines that must be met in order to allow into evidence speed readings from a radar speed measurement device. On laser speed measurement devices, see Section 7.6.

5.4 Speeding Offenses

A. Purpose of Speed Laws

The purposes of speed control laws are to move as many vehicles as possible safely and to promote uniform vehicular speeds. While studies have shown no direct correlation between number of accidents and rate of speed, drivers who travel at rates of speed that deviate — either faster or slower — from the average rate of speed of surrounding traffic, increase the probability of accident involvement. Speed control laws are also important because the severity of injuries is directly related to rate of speed.

B. Elements of a Speed Violation

In addition to the elements common to all traffic offenses,* the elements of a speed violation case are:

*See Section 5.2(B) for a list of common elements in traffic offenses.

- Defendant operated a motor vehicle on the highway; and,
- The speed of the vehicle was in violation of the Michigan Vehicle Code or local ordinance.

Intent is not an element of any civil infraction based on speeding.

Note: The citation for a speeding violation shall specify the speed at which the defendant allegedly drove and the speed limit at the location where the violation allegedly occurred. MCL 257.633(1). Speeding citations that do not meet this statutory requirement have a material defect. See Section 3.4(B)(3) on material defects.

With regard to speed limits, Michigan's **basic speed** law provides as follows:

> "A person driving a vehicle on a highway shall drive at a *careful and prudent speed* not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other condition then existing. A person shall not drive a vehicle upon a highway at a speed greater than that which will permit a stop within the *assured, clear distance ahead*." [Emphasis added.] MCL 257.627(1).

Under the basic speed law, all drivers must drive so that: (1) their speed is careful and prudent under the road conditions; and, (2) they can stop within an assured clear distance ahead.

The basic speed law does not provide any specific speed limit for traffic in Michigan. The Legislature has, however, supplemented the basic speed law with numerous specific statutory limits for Michigan traffic. The statutes containing these specific speed limits are not well organized, and can thus be very confusing to read. It is helpful to realize that the Michigan Vehicle Code supplements the basic speed law with two different types of specific speed limits:

- **Conclusive** speed limits (sometimes called "absolute" or "unqualified maximum" speed limits); and,
- ***Prima facie*** speed limits.

*On the burden of proof, see Section 5.2(A).

If a driver violates a conclusive speed limit, he or she has no defense to the charge, other than to challenge the accuracy of the citing officer's speed measurement. If the officer proves by a preponderance of the evidence* that the driver's speed exceeded a conclusive speed limit, evidence of the prudence of that speed or the ability to stop is irrelevant to a determination of responsibility.

Drivers who violate a *prima facie* speed limit may raise the defense that their speed was careful and prudent under the circumstances, in accordance with the basic speed law.

> **Note:** Statutes imposing a *prima facie* speed limit will contain such language as "it is *prima facie* unlawful for a person to exceed the speed limits . . ." Statutes imposing a conclusive speed limit will have statements such as ". . . *shall* not exceed the speed of. . . ."

The rest of this section will describe the foregoing concepts in more detail.

C. Careful and Prudent Speed

Underlying the concept of careful and prudent speed in the basic speed law is the premise of ordinary care, i.e., the rate of speed that a reasonable person would conclude to be proper, considering all conditions. Magistrates should recognize that speed limits are designated by authorities in law enforcement and traffic engineering. Speed limits are reasonable only for the conditions for which they are set, typically optimum conditions such as fair weather and off-peak traffic volumes.

When deciding whether a driver was traveling at a careful and prudent speed, the magistrate should consider such factors as:

- Weather (rain, wind, snow, etc.);
- Time of day (daytime vs. nighttime);
- Road surface (rough, wet, icy, etc.);
- Sight limitations (hills, curves, parked cars, etc.);
- Traffic volume (pedestrians, other types of vehicles); and,
- Vehicle type (braking capacity, stopping distance).

The Michigan Supreme Court has made the following comments about "careful and prudent speed."

- *Patterson v Wagner*, 204 Mich 593, 602 (1919):

"The rate of speed [of an automobile] must always be reasonable and proper, having due regard to existing conditions at the time and place, the lives and safety of the public being the test."

- *Bade v Nies*, 239 Mich 37, 39 (1927):

  The driver of an automobile must drive the car in a reasonable safe manner. It may be necessary to drive at a lesser speed than the maximum allowed by law.

- *Dempsey v Miles*, 342 Mich 185, 192-193 (1955):

  A motorist may be guilty of negligence in driving too fast even though keeping within the statutory limit. Drivers must have regard for the situation, and operate their vehicles accordingly.

- *Szost v Dykman*, 252 Mich 151, 153 (1930):

  The driver of an automobile may be negligent in driving too slowly: "Speed may be unreasonably slow as well as unreasonably rapid."

D. Assured Clear Distance

The concept of assured clear distance ahead in the basic speed law is typically applied to accident cases because the collision itself is evidence of the inability to stop within a clear distance ahead. The ability to stop as a measurement of speed is contingent on several factors, including:

- Driver's perception and reaction time;
- Road surface conditions; and,
- Vehicle's braking capacity.*

*See Section 5.5(B) on evidence of stopping distances.

The Michigan Supreme Court has made the following comments regarding the assured-clear-distance-ahead concept:

- *Buchel v Williams*, 273 Mich 132, 137 (1935):

  The "assured clear distance" rule is not confined to the ability to observe fixed objects ahead; it includes moving objects as well.

- *Marek v City of Alpena,* 258 Mich 637, 642 (1932):

  The assured clear distance rule applies to collisions with vehicles or other objects not part of the roadway; the rule does not apply to objects that are a part of the roadway, such as holes or bumps.

- *Thompson v Southern Michigan Transportation Co*, 261 Mich 440, 446-448 (1933):

  Atmospheric conditions (e.g., fog) do not change the rule that drivers should have their vehicles under control so that they can stop within the range of their vision. If a driver's vision is obscured, he or she must slow

down so as to be able to stop if necessary.

- *Hoag v Fenton*, 370 Mich 320, 325-326 (1963), *Cole v Barber*, 353 Mich 427, 431 (1958), and *Barner v Kish*, 341 Mich 501, 505-507 (1954):

  A motorist who has been driving so as to be able to stop within what had been his assured clear distance ahead is not in violation of such rule where such distance is suddenly and unexpectedly invaded by another vehicle coming from the side at a time and place such that the first driver cannot avoid a collision with it.

- *Lett v Summerfield,* 239 Mich 699, 702 (1927), and *Russell v Szczawinski*, 268 Mich 112, 116 (1934):

  "[I]t is negligence . . . to drive an automobile . . . in the dark at such speed that it cannot be stopped within the distance that objects can be seen ahead . . . ."

- *Meehl v Barr Transfer Co*, 296 Mich 697, 701 (1941):

  "The duty of so driving as to have assurance of safety ahead is imposed by the law of the road and exacts no higher degree of care than that of the common dictates of prudence."

If the accident at issue involves a **rear-end collision**, MCL 257.402 governs, as follows:

> "(a) . . . when it is shown by competent evidence, that a vehicle traveling in a certain direction, overtook and struck the rear end of another vehicle proceeding in the same direction, or lawfully standing upon any highway within this state, the driver or operator of such first mentioned vehicle shall be deemed prima facie guilty of negligence. . . .
>
> "(b) This section may not be invoked by the owner of any vehicle, the rear of which was struck under the circumstances above mentioned, if the accident occurred between 1 hour after sunset and 1 hour before sunrise, and the vehicle so struck did not, at the time, have a lighted lamp or lantern reasonably visible to the drivers of vehicles approaching from the rear."

*On the burden of proof, see Section 5.2(A).

A collision occurring under the circumstances described in this statute is *prima facie* evidence of negligence on the part of the driver of the vehicle overtaking and striking another vehicle from the rear. *Prima facie* evidence means that this evidence alone, if uncontested by the defendant, meets the preponderance of the evidence standard set forth in MCL 257.746(4).* Unless the defendant can produce other evidence that contradicts the *prima facie* evidence, the magistrate must enter a finding of responsibility against the defendant for failing to stop within the assured clear distance.

In *Hill v Wilson*, 209 Mich App 356, 360-361 (1995), the Court of Appeals considered whether an abrupt stop by the lead vehicle is sufficient to contradict the *prima facie* case for negligence against a following vehicle that collides with it under MCL 257.402. In the *Hill* case, a motorcyclist traveling in heavy traffic was injured when his vehicle struck the car in front of it, which had braked for a family of ducks crossing the road. The Court of Appeals ruled that the sudden braking of the lead vehicle in this case did not contradict the *prima facie* presumption that the motorcyclist was negligent under the rear-end statute. Finding the motorcyclist negligent, the Court of Appeals stated that parties driving in heavy traffic where sudden stops could be reasonably expected should drive in the anticipation that unexpected events may cause drivers ahead to slow down or stop.

E. Conclusive Speed Limits

As noted in Section 5.4(B), conclusive speed limits are maximum speeds set in advance for certain types of areas and vehicles.* In the MVC, a statute imposing a conclusive speed limit will contain language stating that the motorist "*shall*" not exceed a given speed.

*"Conclusive" speed limits are also sometimes referred to as "absolute" or "unqualified maximum" speed limits.

If the officer proves that a motorist was exceeding a conclusive speed limit, the magistrate must conclude that the motorist is responsible for a speed violation. The magistrate may not consider the motorist's argument that his or her speed was careful and prudent under the circumstances according to the basic law. The motorist's only defense when charged with violating a conclusive speed limit is to dispute whether a valid speed reading was obtained by the complaining officer.

There is *no* requirement that speed limit signs be posted in the case of conclusive speed limits. The conclusive speed laws are as follows:

- 45 mph for construction survey and work areas. MCL 257.627(9). A different speed limit set by a local authority may apply if it is posted.*
- 50 mph for a person driving a school bus (55 mph on a limited access highway or freeway). MCL 257.627(7), 257.627b.
- 55 mph for vehicles pulling trailers over 750 lbs. MCL 257.627(5).
- 55 mph for tractors, trucks, combinations weighing 10,000 pounds or more. (35 mph when reduced loadings are being enforced.) MCL 257.627(6).
- 55 mph on all highways upon which a maximum speed limit is not otherwise fixed. MCL 257.628(1). A county road commission or the state transportation commission and the state police may jointly determine that this speed is not safe for a particular county highway or state trunkline highway and set a different speed, which will be effective when posted.
- Except as otherwise provided in MCL 257.628, 65 mph on all freeways. The state transportation department, however, may designate not more than 170 miles of freeway on which the speed limit may be less than 65 mph. MCL 257.628(7).

*MCL 257.601b doubles the fine for a moving violation at a construction zone, school zone, or emergency scene.

> **Note:** MCL 257.628(7) also established five 70 mph test zones on Michigan freeways. A study of these zones was completed in

December 1996, and based on its results, certain miles of freeway were increased to 70 mph.

F. *Prima Facie* Speed Laws

*See Section 5.2(A) on burden of proof issues.

Normally, the plaintiff has the burden of proof to show by a preponderance of the evidence that a defendant committed a civil infraction.* The evidence that will establish the plaintiff's case if the defendant presents no evidence in rebuttal is known as *prima facie* evidence. For speed violations, the Legislature has specified by statute certain speeds in certain locations that constitute *prima facie* evidence of a violation. Once the plaintiff has presented evidence that the defendant exceeded a *prima facie* speed limit, the burden shifts to the defendant to introduce evidence that contradicts the plaintiff's case. If the defendant presents no contradictory evidence or insufficient contradictory evidence, the court must find the defendant responsible for the speeding infraction.

*See *Walls v Transamerican Freight Lines*, 37 Mich App 307, 311-312 (1971), which explains the meaning of *prima facie* speed limits in the context of Ohio's basic speed law.

Where a statute or ordinance states that a given speed is "*prima facie* unlawful," evidence that the defendant exceeded this limit will establish the plaintiff's case for responsibility unless the defendant then proves by a preponderance of the evidence that his or her speed was reasonable, safe, and prudent in accordance with Michigan's basic speed law.* A *prima facie* speed limit differs from a conclusive speed limit in that the defendant is permitted to introduce rebuttal evidence in defense of the charge. (Recall that in the case of conclusive speed limits, the only available defense is that the officer did not accurately measure defendant's speed.)

At the state level, the Michigan Legislature has provided for several *prima facie* speed limits in the MVC. Except in the case of school zones, these MVC speed limits need *not* be posted. The *prima facie* speed limits in the MVC are:

- 25 mph in business or residential districts; public parks. MCL 257.627(2)-(3).
- 15 mph in mobile home parks. MCL 257.627(4).
- 25 mph in a school zone, under certain conditions set forth in MCL 257.627a. Permanent signs designating the school zone and the speed limit in it must be posted.*

*MCL 257.601b doubles the fine for a moving violation at a construction zone, school zone, or emergency scene.

A local authority may establish a *prima facie* speed limit on a highway under its jurisdiction if it follows the requirements set forth in MCL 257.629. If the local authority increases or decreases a *prima facie* speed limit from the limit set in the MVC, this increased or decreased speed must be posted to be binding.

5.5 Evidence of Speeding Offenses

A. Facts About Speed and Velocity

Speed is a rate of travel expressed in miles per hour (mph). Police officers can calculate conservative speed estimates using one of the three methods

listed below. These methods can be used only if evidence has been collected regarding length of skidmarks, tire-roadway fraction interaction, and type of roadway (grade, wet or dry, etc.).

- speed= $\sqrt{\text{skid distance} \times \text{drag factor}} \times 5.5$
- Northwestern University Traffic Institute skidmark-speed nomograph. See J.S. Baker, *Simple Estimates of Vehicle Stopping Distances and Speed from Skidmarks* (Northwestern University Traffic Institute, 1985), in the Reference Section.
- Stopping distance charts. See Section 5.5(B), below.

Drag factor is dependent on type of vehicle. For example, the drag factor is reduced for heavy trucks and buses due to a shift in weight that occurs when these vehicles are braked suddenly. For further discussion of drag factor and other issues relating to stopping distances, see the article *Simple Estimates of Vehicle Stopping Distances and Speed from Skidmarks*, in the Reference Section. The skidmark-speed nomograph shown in this article is used to compute braking distance.

> **Note:** To be relevant, the testimony of investigating officers regarding skidmarks must link the skidmarks to a given collision, showing a connection between the tracks and the place of collision. *Wilhelm v Skiffington,* 360 Mich 348, 352 (1960).

Velocity is a rate of travel expressed in feet per second (fps).

Note: Use the following equation to convert mph to fps:

mph x 1.47 (or 1.5)* = fps

*1.47 is the precise multiplier; 1.5 is generally accepted.

Use the following equation to convert fps to mph:

fps ÷ 1.47 (or 1.5)* = mph

*1.47 is the precise multiplier; 1.5 is generally accepted.

B. Facts About Stopping Distances

The three components of stopping distances are perception, reaction, and braking times. **Perception** time is the amount of time required for a driver's eye to register and transmit signals to the brain about a traffic situation requiring attention. **Reaction** time begins when the brain has processed the incoming information and has determined that a reaction is necessary. The **braking** distance is the amount of roadway covered from the moment the driver's foot reacts to the impulses transmitted from the brain and makes contact with the brake pedal until the car comes to a complete stop.

Stopping distance is equal to the sum of perception distance, reaction distance, and braking distance, i.e., stopping distance = perception distance + reaction distance + braking distance. Thus, to calculate **perception and reaction distance** for purposes of accident analysis, the perception and reaction times must be converted to linear feet. Perception time can range from as little as .09 seconds to 2 seconds depending on the driver's circumstances at the time of the

*Times provided by the Northwestern University Traffic Institute.

incident. Reaction time can be anywhere from 1/4 second to 3/4 second depending on the driver's degree of attentiveness.* The following example illustrates how perception and reaction distance are calculated.

Example: A driver is traveling at 40 mph and the perception-reaction time is assumed to be 1.5 seconds. To determine the driver's perception-reaction distance:

1) Convert mph to fps:

40 mph x 1.5 = 60 fps

2) Multiply fps by perception-reaction time:

60 fps x 1.5 seconds = 90 feet = perception-reaction distance.

To calculate **braking distance**, use the following equation:

$$\text{Braking Distance} = \frac{\text{Speed}^2}{30 \times \text{Drag Factor}}$$

Speed is often a contributing factor in traffic crashes, because as a driver's speed doubles, the perception distance and reaction distance also double, but the braking distance quadruples. The following chart shows the relationship of speed to distance required to perceive, react, and brake:

Table 1:

Speed			
	25 mph (37 ft/sec)	**50 mph (74 ft/sec)**	**75 mph (111 ft/sec)**
Perception Distance	28	56	84
Reaction Distance	28	56	84
Braking Distance	27	108 = (4x27)	243 = (9x27)

5.6 Right-of-Way or Failure to Yield Offenses

A. Elements of Right-of-Way Offenses — General Rules

The Michigan Vehicle Code defines "right-of-way" as "the privilege of the immediate use of the highway." MCL 257.53. When adjudicating right-of-way cases, the magistrate should generally consider:

- Which driver had the lawful right-of-way; and,
- Whether or not failure to yield right-of-way caused interference and evasive action to avoid an accident, or resulted in an accident.

The magistrate should disregard whether or not a collision actually occurred and which vehicle struck the other. These factors are not necessary to support a finding of responsibility.

To determine which driver has the right-of-way at an intersection on Michigan roads, the following general rules apply:

- "The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway." MCL 257.649(1).
- "When 2 vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right." MCL 257.649(2).
- **Exception:** "The driver of a vehicle traveling at an unlawful speed shall forfeit a right of way which the driver might otherwise have . . . ." MCL 257.649(5).

> **Note:** In some other states, if one driver forfeits the right-of-way, the other driver automatically gains it. In Michigan, there is *no* such right-of-way shift.

The foregoing rules apply except as modified at "through highways" and as otherwise stated in the MVC. MCL 257.649(3). On MVC provisions regarding specific traffic conditions, see Section 5.6(B).

Michigan appellate courts have made the following statements about the general rules applicable to right-of-way issues:

1. Primary Rule (MCL 257.649(1))

- *Placek v Sterling Heights*, 405 Mich 638, 669 (1979):

  The standard of care to be adhered to by a driver having a right-of-way is the standard of reasonable or due care under the circumstances.

2. Uncontrolled Intersections (MCL 257.649(2))

- *Beauchamp v Olson*, 42 Mich App 323, 325 (1972):

The favored motorist must still exercise reasonable care at intersections.

- *Green v Richardson*, 69 Mich App 133, 137 (1976), and *Diamond v Holstein*, 373 Mich 74, 80 (1964):

  A driver proceeding straight ahead on a country road intersected at right angles by another road ending in the intersection, neither way being legally favored over the other, is not required to yield first passage to the vehicle on the right; a statute which states that when two vehicles enter an intersection from different highways at approximately the same time, the driver on the left must yield the right-of-way to the vehicle on the right does not apply to right-angled country roads forming a "T."

- *Strong v Kittenger*, 300 Mich 126, 134 (1942), and *MacDonald v Skornia,* 322 Mich 370, 376 (1948), citing *Stuck v Tice*, 291 Mich 486 (1939):

  "Normally . . . when two cars collide on a bright clear day at the intersection of thoroughfares of equal importance, both drivers are to blame."

- *MacDonald v Skornia,* 322 Mich 370, 377-378 (1948):

  "[T]he driver of an automobile must make proper observation before entering an intersection. . . . A driver who proceeds into an intersection without ascertaining whether traffic is approaching on the intersecting street is not excused by the fact that his view, as he approaches the intersection, is obstructed. . . . [U]nder such circumstances . . . an ordinary, reasonable, prudent, and careful person would stop in a position of safety from which due observation could be made, and look to ascertain to a certainty whether another vehicle is approaching the intersection behind the obstruction. . . ."

- *Faustman v Hewitt*, 274 Mich 458, 462 (1936):

  If neither highway is a through highway, the driver approaching from the right has the right-of-way if he or she reaches the intersection first, or if both cars enter the intersection at the same time.

3. Forfeiture of Right-of-Way — Unlawful Speed (MCL 257.649(5))

- *Holloway v Cronk*, 76 Mich App 577, 581 (1977):

  The statutory provision that a speeding vehicle forfeits its right-of-way applies to all right-of-way provisions to which the vehicle might be otherwise entitled under the statute. (With an exception for through highways.)

4. Exception to Forfeiture Rule — Through Highways*

*A through highway that handles long distance travel may also be referred to in the cases as an "arterial" or "trunkline" highway.

- *Sabo v Beatty*, 39 Mich App 560 (1972):

  A vehicle traveling on a trunkline highway at an unlawful speed does not forfeit any right-of-way which it might otherwise have had. Thus, a vehicle that enters a trunkline highway from a subordinate road after stopping at a red flashing signal violated its duty to yield to oncoming traffic when it collided with another vehicle traveling on the trunkline highway at an unlawful speed.

- *Noyce v Ross*, 360 Mich 668, 678 (1960):

  The driver on an arterial highway has a right to assume that drivers on subordinate highways will yield the right-of-way and is not bound to anticipate negligent acts on the part of those approaching the arterial highway.

B. Right-of-Way Statutes

The foregoing general rules regarding right-of-way are modified to some extent by statutes governing specific traffic conditions.* Right-of-way statutes apply to the following traffic conditions:

*Right-of-way offenses are also discussed in 1 *Traffic Benchbook Revised Edition* (MJI, 1999), Chapter 2.

1) Intersections

   - Uncontrolled. MCL 257.649(1)-(2). See also Section 5.5(B).
   - Signed. MCL 257.649(4), (6)-(7) and MCL 257.671.
   - Signaled. MCL 257.612.

2) Left turns. MCL 257.650.

3) Emergency vehicles. MCL 257.653.

4) Funeral procession. MCL 257.654.

5) Pedestrians. MCL 257.612, 257.655.

6) Using private property to avoid traffic control devices. MCL 257.611(2).

7) Failure to obey school crossing guards. MCL 257.613d.

8) Railroad grade crossings. MCL 257.667.

9) Private drive or alley. MCL 257.652.

10) Officers performing manual traffic direction duties. MCL 257.602, 257.602a.

Michigan appellate courts have made the following comments regarding some of the foregoing infractions:

1. Stop Signs (MCL 257.649(6))

- *People v McIntosh*, 23 Mich App 412, 415-418 (1970):

  A stop sign serves only to notify motorists of the approaching intersection and does not signify the exact spot at which vehicles are required to stop where it is placed a considerable distance from the intersection. The driver of a vehicle approaching a stop intersection indicated by a stop sign that has no crosswalk or clearly marked stop line shall stop at the point *nearest* the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. The driver in this case did not stop as required by statute at the point *nearest* the intersection where he stopped five feet from a stop sign which was placed 55 feet from the intersection, even though he had an unobstructed view from the place where he stopped.

- *Erdei v Beverage Distribution Co*, 42 Mich App 377, 380 (1972):

  A driver who knows or should know that he is approaching a stop intersection may properly be charged with notice that he should stop before entering the intersection even though the stop sign may be down or for some reason is not showing.

- *People v Jones,* 132 Mich App 368 (1984):

  Defendant in this case was unable to stop his car at a stop sign due to icy conditions and was ticketed for a civil infraction when his car entered the intersection and struck another car. The citation was for violation of a township ordinance substantially similar to MCL 257.649(6) and (8). Defendant was aware of the icy road conditions at least five minutes before the accident and could have applied his brakes earlier than he did. The district court dismissed the citation against defendant, reasoning that he had attempted to stop his car and did not intend to violate the traffic ordinance. The circuit court affirmed the district court on appeal. The Court of Appeals, however, reversed the circuit court's decision upholding the dismissal and ordered the district court to enter a finding of responsibility. The Court of Appeals reasoned that intent was not an element of the civil infraction, and that the defendant's lack of intent to violate the ordinance was irrelevant to a finding of responsibility.*

*For other cases involving ice, see *Vsetula v Whitmyer* and *Young v Flood* in Section 5.2(C).

2. Left Turns at Intersections (MCL 257.650)

- *Donhorst v Van York*, 23 Mich App 704, 709 (1970):

  A left-turning vehicle may acquire right-of-way over oncoming traffic even if the traffic control device gave oncoming traffic a green light.

3. Emergency Vehicles (MCL 257.653)

- *Grabowski v Selman*, 25 Mich App 128 (1970), and *Keevis v Tookey*, 42 Mich App 283, 287 (1972):

  A driver has a right, under permission of a green light, to cross an intersection unless, by the reasonable exercise of the senses of sight and hearing, he should have noticed or heard warning to the contrary in the forms of sirens or oscillating lights.

4. Funeral Procession (MCL 257.654)

- *Mentel v Monroe Public Schools*, 47 Mich App 467, 468-469 (1973):

  A special regulation relating to motor vehicles will prevail over a general one relating thereto in a case of an inconsistency between them; the statute giving a funeral procession the right-of-way when going to any place of burial prevails over the general statute regulating traffic by traffic-control device.

  "Burial" in the statute not only means "interment" but also the act or ceremony of burying. A church where a funeral service is to be held is therefore a "place of burial" within the meaning of the statute.

5. Pedestrians on Highways (MCL 257.655)

- *Ludwick v Hendricks*, 335 Mich 633, 638 (1953):

  "Having discovered an oncoming vehicle, it is the pedestrian's duty to keep watch of its progress and to exercise reasonable care and caution to avoid being struck by it."

- *Vercruysse v Ulaga*, 229 Mich 49, 53 (1924):

  The rights of a driver of an automobile and of a bicyclist riding along a paved highway are mutual and coordinate, the automobile having no superior right-of-way. Accordingly, an automobile driver was bound to respect a bicyclist's rights and observe the law of the road.

- *Martin v Leslie*, 345 Mich 305, 309 (1956):

  A sidewalk alongside a highway must be usable in order to make it unlawful for a pedestrian to use the highway instead of the sidewalk.

C. Facts About Intersections

Intersections are the points at which major and/or minor routes converge. See MCL 257.22.

The presence or absence of traffic control devices at a given intersection is based on the combination of route types which converge at that intersection. The three route combinations are:

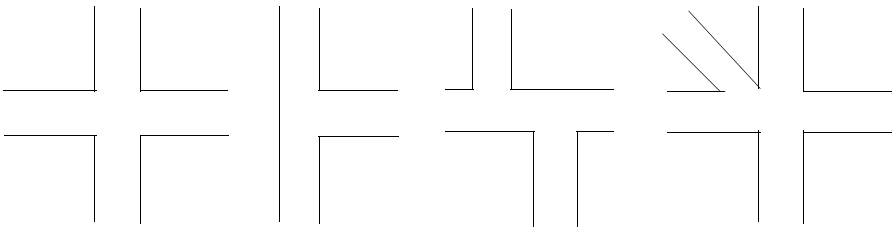
- **The intersection of two major routes.** The right-of-way is determined by well-developed traffic engineering guidelines, and a traffic signal is used to regulate the flow of traffic.
- **The intersection of a major and minor route.** Traffic flow on the minor route will usually be controlled by a stop sign, therefore giving the major highway the right-of-way.
- **The intersection of two minor routes.** At this type of intersection, there are often no traffic control signs or devices. Therefore, it is the task of magistrates to decide traffic disputes arising out of incidents at uncontrolled intersections.

Traffic engineers decide whether or not to sign an intersection based on complaints by citizens, police or other public officials that a traffic problem exists, and traffic studies involving accident reports, volume counts and safe approach speeds.

Safe approach speed studies are a method of determining speeds at which vehicles may safely approach an intersection in relation to vision obstructions. This method is based on certain assumptions:

- The vehicles are in the most dangerous legal position in the roadway.
- Reaction time is one second.
- Deceleration rate is 16 feet per second (fps).
- Driver's eye is seven feet behind the front bumper.
- Vehicle can stop eight feet from point where roadway edges cross.

The following diagram illustrates various types of intersections. The type of intersection may dictate the case law that is applied to right-of-way disputes. See, e.g., *Green v Richardson*, 69 Mich App 133 (1976), and *Diamond v Holstein*, 373 Mich 74 (1964), noted above at Section 5.6(A)(2).



5.7 Careless and Reckless Driving

Although careless and reckless driving have similar elements, the differences between them are great. Careless driving is a civil infraction, subject to a civil fine only, and an informal or formal hearing. Reckless driving is a misdemeanor, subject to a fine and/or imprisonment for not more than 90 days, and a pretrial conference and jury trial. Magistrates should thus be careful to distinguish between these two seemingly similar offenses. Other than the maximum penalties and types of hearings afforded to defendants charged with careless or reckless driving, their key difference is the element of intent, as will be shown in the discussion below.

> **Note:** In adjudicating charges of careless and reckless driving, the magistrate should focus on the defendant's *manner* of driving, not the results of defendant's driving.

A. Careless Driving

MCL 257.626b provides:

> "A person who operates a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public including an area designated for the parking of vehicles in a careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness, is responsible for a civil infraction."

The elements of careless driving are:

- Defendant operated a vehicle on a highway, or other place listed in the statute; and,
- Defendant's operation of the vehicle was in a careless or negligent manner likely to endanger a person or property.

It is important to note that the defendant does *not* have to intentionally drive in a careless manner in order to be found responsible for a civil infraction under this statute. The language in the statute that excludes "wantonness or recklessness" indicates that intent to violate the statute is *not* an element of the offense of careless driving. A careless driver's actions are characterized by inadvertence or inattentiveness.

The Supreme Court addressed the issue of negligence in the following case:

- *Devlin v Morse*, 254 Mich 113, 116 (1931):

  "In any ordinary case, one cannot go to sleep while driving . . . without having relaxed the vigilance which the law requires, without having been negligent; it lies within [the driver's] own control to keep awake or cease from driving; and so the mere fact of...going to sleep while driving is a proper basis for an inference of negligence sufficient to make out a *prima facie* case."*

*On what constitutes a *prima facie* case, see Section 5.2(A).

B. Reckless Driving

MCL 257.626 provides:

> "(1) Any person who drives any vehicle upon a highway or a frozen public lake, stream or pond or other place open to the general public, including any area designated for the parking of motor vehicles, within this state, in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.
>
> "(2) Every person convicted of reckless driving shall be punished by imprisonment in the county or municipal jail for a period of not more than 90 days or by a fine of not more than $100.00, or both."

The elements of reckless driving, a misdemeanor, are:

- Defendant drove a vehicle on a highway or other place listed in the statute; and,
- Defendant's driving was "in wilful or wanton disregard for the safety of persons or property."

"Willful or wanton disregard for the safety of persons or property" describes actions which go beyond the mere carelessness or negligence required for the civil infraction of careless driving. A reckless driver exhibits conscious disregard for the safety of others (*Black's Law Dictionary*, 5th edition, 1979). Therefore, unlike careless driving, reckless driving requires the prosecution to show intent as a required element of the offense, i.e., the driver deliberately drove in the manner alleged.

> **Note:** If the prosecution, in a plea bargain, decides to reduce the charge from reckless driving to careless driving, the misdemeanor charge must be dismissed, and another citation must be issued for a civil infraction, to which the defendant will then plead responsible.

Surrounding conditions and circumstances are very important in deciding whether a driver's conduct is reckless. What would be reckless in one location may not be in another.

Intoxication of a driver does not automatically prove recklessness, but it may be a factor. See *Hindes v Heyboer*, 368 Mich 561, 566-567 (1962), and *People v Marshall*, 74 Mich App 523, 528 (1977).

The Michigan Supreme Court addressed reckless driving in the following case:

- *Blasdell v Wooley*, 243 Mich 3, 4-5 (1928):

  The fact that an automobile struck a boy who was sitting on his bicycle at the right-hand side of a street with one foot on the sidewalk, at night when the street lights were burning, did not show that the driver was wanton or reckless or guilty of gross negligence. The driver was merely careless (negligent).

5.8 Review/Instructional Activities

Before completing the Review/Instructional Activities, view the videotape that depicts two informal hearings involving failure to yield right-of-way and careless driving. As you watch the tape, pay close attention to the magistrates' reasoning process as they adjudicate traffic cases to reach fair and equitable decisions.

The Answer Key is found in Section 5.9.

A. Questions

Question #1

Read each statement. Find the applicable MVC provision and write it down on the lines provided if it is not already given. If the statement is false, draw a line through it, and write a corrected statement on the lines provided.

1. Headlamps on motor vehicles must be centered not less than 24 inches nor more than 60 inches from the ground or pavement.

_____

_____

_____

2. When ridden on roadways, bicycles shall be ridden against traffic.

_____

_____

_____

3. MCL 257.650 regulates traffic trying to make left turns at intersections.

_____

_____

_____

4. The reckless driving statute only applies to the operation of motor vehicles on public roadways.

_____

_____

_____

5. The offense of violating a restricted driver's license (eyeglasses required while driving) is a civil infraction.

_____

_____

_____

6. Drivers who forget to carry their license on their person while driving could be physically arrested without a warrant rather than simply issued a traffic citation.

_____

_____

_____

7. A driver who knowingly produces false evidence of automobile insurance to a police officer has committed a civil infraction.

_____

_____

_____

8. A driver who fails to obey the directions of a police officer performing manual traffic control, could be issued a citation under MCL 257.602.

_____

_____

_____

Question #2

Select the *most correct* answer to each question. Where you find your answer in the MVC, write down the section number in which you found the answer.

1. A motorist traveling at an unlawful speed forfeits any right-of-way at an intersection that he or she might otherwise have had.

   a. True b. False

2. A MVC section stating that a driver will operate a vehicle on a highway "at a careful and prudent speed...having due regard to the traffic...and...any other condition then existing" is defining what type of speed law?

   a. Legislative determination

   b. *Prima facie*

   c. Basic speed

   d. Conclusive speed

3. A person is cited for failing to display a registration certificate. Before the appearance date, the court receives notification from the law enforcement agency that the defendant had a valid registration certificate at the time of the offense. Therefore, the magistrate:

   a. May waive any fines and costs.

   b. Shall reduce the fines and costs.

   c. Shall waive any fines and costs.

   d. Shall suspend the defendant's driver's license.

4. If a person has a chauffeur's license, an operator's license is also required for non-work or personal driving.

   a. True b. False

5. The driver on the left must yield the right-of-way to the driver on the right at an uncontrolled intersection (not a T-intersection) where both vehicles approach the intersection at the same time.

   a. True b. False

6. Where sidewalks are provided, it is unlawful for pedestrians to walk upon the main traveled portion of a roadway other than to cross the roadway.

   a. True b. False

7. The essential difference between the violations of careless driving and reckless driving is the element of "willful or wanton disregard for the safety of persons or property."

   a. True b. False

8. A truck weighing over 10,000 pounds may be operated at a maximum speed of ____ mph on highways other than freeways.

   a. 45 mph

   b. 50 mph

   c. 55 mph

   d. 60 mph

9. A driver can legally drive a vehicle with the entire front windshield covered with solar reflective material.

   a. True b. False

10. Which of the following statements concerning bicycle and pedestrian movements is correct, according to the MVC?

    a. Where no sidewalks or bike paths are provided, both are to move on the right side of the roadway "with traffic," i.e., in the same direction as traffic on that side of the roadway.

    b. Where no sidewalks or bike paths are provided, both are to move on the left side of the roadway "against traffic," i.e., facing oncoming traffic.

    c. The MVC does not regulate the movement of bicycles.

    d. Where no sidewalks or bike paths are provided, bicycles are to be ridden "with traffic," while pedestrians are to walk facing oncoming traffic.

11. Driver A is operating his vehicle in a posted 45 mph zone. While driving, his vehicle "rear ends" another vehicle, causing both injuries and property damage. Given these basic facts, which of the following most correctly describes the charge the investigating officer should bring against the driver?

    a. Posted speed violation

    b. Failure to stop in assured clear distance

    c. Failure to yield the right-of-way

    d. Careless driving

12. Drivers approaching stop signs placed considerable distances from the intersections they regulate must stop where the stop signs are actually placed.

    a. True b. False

13. If it takes you 100 feet to brake to a halt from 25 mph, then it would take you 200 feet to do so from 50 mph.

    a. True b. False

14. 50 mph may be expressed as ____ feet per second.

    a. 75

    b. 65

    c. 60

    d. 50

15. Total stopping distance is made up of which of the following?

    a. Braking distance

    b. Reaction distance

    c. Perception distance

    d. All of the above

16. A is driving 50 mph in a 25 mph zone. At an intersection where B tries to pull out from a stop sign, A and B collide. Because A is exceeding the speed limit, legally the right-of-way shifts to B.

    a. True b. False

17. What type of speed law does the 55 mph maximum in MCL 257.628(1) represent?

    a. Conclusive

    b. *Prima facie*

    c. Basic

Question #3

For questions 1-10, find the most specific provision of the Michigan Vehicle Code or related law that could apply to the given situation.

1. Driving 65 mph in a posted "construction zone."

2. Passing another vehicle while approaching the crest of a hill.

3. Driving to the neighborhood 7-11 Store at 2 a.m. but forgetting to take your wallet (and your operator's permit) with you.

4. Stopping for the stop sign at a cross-street but then pulling out abruptly into cross-traffic that must brake sharply to avoid a collision.

5. At speeds of 40-50 mph, driving your vehicle within 25 feet of a vehicle ahead of you.

6. While being pursued by a police vehicle whose driver is actively trying to stop you, you speed up to escape, turn off your headlamps (time is 3 a.m.), and quickly turn off onto a sidestreet.

7. Driving 45 mph in a 40 mph zone during extremely foggy conditions at night.

8. Driving around town with an open "six-pack" at your feet.

9. Driving on Highway M-43 while your operator's license has been suspended by the Michigan Department of State.

B. Practice Problems

Practice Problem #1

This civil infraction case involves a defendant cited for disobeying a red light. The defendant, who denies responsibility, testifies that he did not realize he had run the red light until the citing police officer stopped him. He also testifies that while he did not intend to run the light, he did so because he turned around in an attempt to separate his two children who were fighting in the back seat. Is this defendant responsible even though his action was unintentional?

Check one answer:

____ Yes ____ No Explain your answer.

Practice Problem #2

Your next informal hearing involves a defendant cited for driving 73 miles per hour on a freeway with a posted speed limit of 55 miles per hour. The defendant testified that she was speeding but offered three arguments: (1) her speedometer showed she was traveling only 69 miles per hour; (2) other vehicles on the same freeway were traveling as fast as or faster than hers but she was "picked on" because she drove a red, imported sports car; and (3) the citing officer was rude to her and made several sexist remarks as well. How would you decide this case?

Practice Problem #3

At an informal hearing the defendant denied responsibility for disobeying a red traffic light. She raised two arguments against responsibility: (1) she did not run the red light intentionally, but did so because her crying baby distracted her just as the light changed from yellow to red; and (2) the citation was invalid because it incorrectly identified her car as a brown Lynx instead of a red Escort, and incorrectly listed the violation date at 3:30 p.m. on Tuesday, March 12th instead of 3:50 p.m. on Tuesday, March 13th. How would you decide this case?

5.9 Answer Key

A. Answers to Questions

Answers to Question #1

F 1. MCL 257.685(c) requires headlamps to be centered between 24 and 54 inches above the ground or pavement.

F 2. MCL 257.660(1) requires bicycles to be ridden with traffic.

T 3. MCL 257.650(1) does regulate left turning traffic at intersections.

F 4. MCL 257.626(a) covers areas other than public highways, e.g., frozen lakes, parking areas open to the public, etc.

F 5. Under MCL 257.312(4), violations of restricted licenses are misdemeanors.

T 6. MCL 257.727(d) does authorize physical arrests without a warrant where, in the discretion of the officer, such arrest is needed to ensure the person's appearance in court.

F 7. Under MCL 257.328(5), knowingly presenting false evidence of insurance is a misdemeanor. Notice, however, that under subsection (1) of this statute, mere failure to produce evidence of insurance, without criminal intent, is a civil infraction. See Section 5.2(B) for a discussion of intent as an element of traffic offenses.

T 8. As stated in MCL 257.602.

Answers to Question #2

a 1. MCL 257.649(5). But see Section 5.6(A)(4) for an exception for through highways.

c 2. MCL 257.627(1).

c 3. MCL 257.907(14).

b 4. MCL 257.301(5).

a 5. MCL 257.649(2). See Section 5.6(A)(2) and *Green v Richardson*, 69 Mich App 133 (1976).

a 6. MCL 257.655.

a 7. MCL 257.626, 257.626b.

c 8. MCL 257.627(6).

b 9. MCL 257.709(1)(a).

d 10. MCL 257.655, 257.660.

b 11. MCL 257.627(1).

b 12. MCL 257.649(6).

Note: The answers to questions 13-15 are not found in the Motor Vehicle Code. Alternative references are provided.

b 13. See Section 5.5(B).

a 14. See Section 5.5(A).

d 15. See Section 5.5(B).

b 16. MCL 257.649(6) requires a driver stopped at an intersection (here, driver B) to yield the right-of-way to a vehicle "which is approaching so closely . . . as to constitute an immediate hazard during the time when the driver would be moving across or within the intersection." In this case, driver B will be responsible for a violation of this provision if driver A was close enough to be a hazard when B entered the intersection. If it can be shown that driver A was in fact exceeding the speed limit, driver A, too, would be responsible for a civil infraction; however, driver A's violation of the law does not transfer the right-of-way to driver B, or excuse driver B from the requirements of MCL 257.649(6).

a 17. By definition of conclusive speed, MCL 257.628(1) applies. The statute states, "The maximum speed limit on all highways . . . *shall be* 55 miles per hour."

Answers to Question #3

1. MCL 257.627(9).
2. MCL 257.639(1)(a).
3. MCL 257.311.
4. MCL 257.649(6).
5. MCL 257.643(1).
6. MCL 257.602a. See also MCL 750.479a and 2 *Traffic Benchbook—Revised Edition* (MJI, 1999), Section 7.4.
7. MCL 257.627(1).
8. MCL 257.624a.
9. MCL 257.904(1).

B. Solutions to Practice Problems

Solution to Practice Problem #1

Answer: Yes

Explanation: MCL 257.611(1) states in part that a driver "shall not disobey the instructions of a traffic control device." It does not contain terms such as "intentionally or willfully." The only elements of the offense are (a) that the device was legitimately placed there, and (b) that the driver disobeyed its instructions. Most statutes defining traffic offenses are similar to this one in that intent is not an element. The magistrate might explain to the driver that the purpose of the statute is to promote public safety; a safer solution to the driver's problem in this case would have been to concentrate on driving, pull over and stop when it was safe to do so, and then deal with the children.

Solution to Practice Problem #2

Answer: You should find the defendant responsible as charged for the offense.

Explanation: The defendant's arguments are best considered in their reverse order. The latter two arguments are irrelevant to the issue of her speeding and carry no weight as mitigating factors. With respect to her complaint about the officer mistreating her, you might suggest that she direct her complaint to the citing officer's department.

The defendant's second argument amounts to a claim that she was singled out because she drove a red car, a sports car, an imported car or perhaps all three. While it might be unfair that she was stopped instead of some other driver, she admitted she broke the law. The argument that the others also broke the law does not excuse her violation, and you should point this out to her.

The defendant's explanation about her speedometer appears to be an attempt to reduce the point assessment under MCL 257.320a to one point rather than two. This argument is not supported by proof of a defective speedometer, such as a repair receipt. Moreover, the defendant offered no proof that the officer's radar unit was defective. Note that speedometer failure is no basis for an equipment violation, because there is no statutory requirement that a vehicle have a speedometer.

Solution to Practice Problem #3

Explanation: Even though the defendant did not intentionally disobey the traffic light, intent is not an element of this civil infraction. The defendant's being distracted by her baby may be a mitigating circumstance which you may choose to consider when imposing civil sanctions.

With respect to the defendant's second argument, a traffic citation is valid unless it contains material errors, that is, errors that go to the substance of the charges. Material errors may include: incorrectly identifying the defendant; charging the defendant with the wrong offense or conduct that is not an offense; incorrectly identifying the offending vehicle; incorrectly stating the time and place of the offense; and failing to sign the citation. You should reach an understanding with your district judge about what constitutes a material error.

In many instances, whether an error is material is a matter of degree. Such particulars of the offense as the description of the defendant's car or the time and place of the offense must reasonably identify the defendant and notify him or her of what conduct allegedly violated the law. Although reasonable magistrates might disagree in this case, an argument can be made that the slightly incorrect description of the defendant's vehicle still reasonably identified it. The date of the offense poses a more serious problem, one which you may deal with by asking both parties when the event allegedly occurred. In all probability, the officer entered the right day of the week but the wrong date on the citation, and there is no doubt the event occurred on a Tuesday. The 20-minute time difference is not a material error, especially since the defendant admitted she was at the site of the incident at approximately the time alleged by the officer. Following this line of reasoning, you would not dismiss this citation with prejudice because none of the errors is material.

Having disposed of the defendant's two arguments, you should next require her to give evidence showing she did not disobey the traffic light. If she offers none, you may find her responsible.

Before you go to the next unit, turn to the first section of this unit and review the instructions. Make sure you have completed each step before moving on to Unit 6.